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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

MM Docket No. 97-182

To: The Commission

COMMENTS OF CHAMPLAIN VALLEY TELECASTING, INC.

Introduction

Champlain Valley Telecasting, Inc. ("CVTI"), permittee of WFFF(TV), Channel 44, Burlington, Vermont, hereby submits its comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding. FCC 97-296, released August 19, 1997 (NPRM).

[CVTI recently placed WFFF(TV) on the air at a temporary sub-standard transmitter site, having been frustrated by a myriad of obstacles in its efforts to obtain access to Mt. Mansfield, the optimal transmitter site for the area. Mt. Mansfield is presently used by three area TV stations, including Burlington's CBS and ABC affiliates. CVTI's efforts covered in excess of three years and consumed considerable resources. All the while, more than 500,000 area viewers were deprived of their first over-the-air Fox signal. 175,000 of these viewers will remain unable to view WFFF until the station is authorized to operate from Mt. Mansfield. As detailed more fully below, CVTI's experience provides strong support for the proposal of the National Association of

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Broadcasters ("NAB") and the Association of Maximum Service Telecasters ("AMST") (collectively, the "Petitioners") to preempt state and local land use laws and for putting teeth in the agency's Unique Site Rule, 47 C.F.R. 73.635, so that it will serve as a useful tool for broadcasters seeking to institute new or improved television service.

Background

CVTI has attempted for years to get permission through local land use authorities to operate WFFF(TV), Burlington, Vermont, from Mt. Mansfield. These efforts took on unusual public interest significance since WFFF(TV) proposed to provide the first over-the-air Fox network service to the Burlington, VT-Plattsburgh, NY market, the largest market in the country without a Fox affiliate. WFFF also represented the area's fourth local television transmission service. Because CVTI has been unable to get the local land-use approvals necessary to construct at Mt. Mansfield, WFFF has been forced to operate from a temporary site at Terry Mountain in upstate New York. Due to terrain obstructions, WFFF(TV) is unable to serve substantial areas of Vermont to the east of Burlington from the Terry Mountain site. As indicated on the engineering data attached hereto as Exhibit A (originally submitted with CVTI's request for authority to operate from Terry Mountain) CVTI serves only 372,403 persons and 15,208 sq. km. from the Terry Mountain site whereas service to 548,157 persons and 27,524 sq. km. would be provided from Mt. Mansfield. Accordingly, operation from Terry Mountain serves 32% fewer persons and 45% less area than would be reached from the Mansfield site.

Mt. Mansfield Collocation Association Approval

Despite an FCC permit specifying Mt. Mansfield,¹ CVTI has been frustrated since 1994 in its efforts to obtain the necessary environmental and land use consents at that site by the Mt. Mansfield Collocation Association ("MCAA"), a five member group which must authorize any construction there. Among the members of MCAA are WCAX(TV) the local CBS affiliate, WVNY(TV), Burlington's ABC outlet, the University of Vermont, and Vermont ETV, licensee of WETK(TV)(PBS). WCAX(TV), WVNY(TV), and WETK(TV) all operate from towers on Mt. Mansfield. Until recently when WFFF went on the air from the Terry Mountain site, WCAX(TV) broadcast Fox's National Football League programming because there was no Fox affiliate in the market. During WFFF's efforts to obtain access to Mt. Mansfield, the local press reported that loss of NFL programming could cost WCAX(TV) millions of dollars in advertising. See Exhibit B: Media Outlets Fight Over Antenna Space, The Stowe Reporter, June 13, 1996.

Among the concerns voiced by the MCAA were (i) that there was an existing RF radiation ("RFR") problem on the Mountain which needed to be addressed; and (ii) that no new towers should be built until after the conclusion of a master plan taking into account the needs of all parties for tower space for digital transmission facilities.

(a) The RFR Problem

The antenna for a Vermont Public Radio station is mounted on the Vermont ETV tower on Mt. Mansfield, and is in apparent violation of both the existing and proposed

¹ File No. BMPCT-960212KG

Commission RFR limits. Due to lack of funds, however, Vermont ETV is not in a position to build a new tower, or alter the current one, in order to meet the RFR limits. In an effort to solve this problem, CVTI negotiated an agreement contemplating the construction of a new tower at the WETK(TV) site. It would accommodate both WETK(TV) and WFFF(TV), and solve the RFR problem. The agreement also took into account the digital needs of both WETK and WFFF. The agreement would benefit Vermont ETV by providing it with a substantial amount of new broadcast equipment and economic benefits for future years, and solve Vermont Public Radio's RFR problem without cost to it. CVTI also believed that the plan would allay concerns of MCAA about putting an additional tower on Mt. Mansfield.

CVTI submitted the WFFF/WETK tower proposal to the MCAA on March 7, 1996, but it was put on hold pending issuance of the Commission's new RFR guidelines. Subsequently, CVTI increased the proposed tower height to ensure that WFFF(TV) would not add to the RFR level on Mt. Mansfield, and reapplied to the MCAA on September 19, 1996.

(b) The Master Plan

After CVTI submitted its revised plan, the MCAA executive committee decided that it would not make determinations on applications for new stations until it undertook a master planning process as ordered by the District 5 Environmental Commission, the local division of the State Environmental Board. See Exhibit C: Stations Jockey for Use of Mt. Mansfield, Sunday Times Argus, April 7, 1996. The Master Plan was to study the long-range uses of the Mt. Mansfield summit for both analog and digital television, and would take at least one year to complete. Phase One of that study was to address the

future of Mt. Mansfield in general terms. Phase Two would consider the future in light of the Commission's DTV table of allotments. Phase Three would involve the filing of the Master Plan in the form of an Act 250 umbrella permit. Act 250 is the state land-use regulation which applies to all large scale development impacting over 10 acres of land.

Temporary Operations from Terry Mountain

In order to introduce new television service to the Burlington area in the face of these numerous obstacles, CVTI was forced to find an alternative transmitter site. After weeks of research, CVTI settled on an interim site on the WPTZ(TV) (NBC) tower on Terry Mountain. In February, 1997, the Commission granted CVTI a special temporary authorization to operate WFFF(TV) from that site.²

Before constructing at the WPTZ(TV) site, however, CVTI had to obtain the approval of the Adirondack Park Authority, which controls the land around Terry Mountain. Substantial resources were expended obtaining this approval. In addition, the existing WPTZ tower had to be upgraded at a cost of approximately \$500,000 since it was determined that the tower couldn't withstand the additional weight and wind-loading of the WFFF(TV) transmission line and antenna.³ None of the costs incurred in connection with the Terry Mountain site can be recouped when WFFF moves to Mt. Mansfield. After retrofitting the WPTZ site to accommodate WFFF, the station

² See Letter from Clay C. Pendarvis, Chief, Television Branch to Champlain Valley Telecasting, Inc. (February 21, 1997).

³ This includes approximately \$250,000 to modify the WPTZ(TV) tower, (\$200,000 to modify the WPTZ antenna to accommodate the WFFF(TV) transmission facilities, and \$300,000 to make modifications to the buildings, power and roads related to the transmission facilities).

commenced operations on August 31, 1997. CVTI continues to aggressively pursue the necessary local land use consents for the Mt. Mansfield site.

Enter the Vermont Legislature

In the interim, on December 16, 1996, CVTI withdrew its revised application out of frustration with the lack of progress by the MCAA. Local papers discussing the plight of CVTI came to the attention of Vermont State Senator Vincent Illuzzi, who contacted CVTI about the issue through an intermediary and expressed a concern that the dominance of the Mt. Mansfield site by in-market television competitors to CVTI was interfering with the introduction of a new television service. That Senator, Vincent Illuzzi, held hearings on the subject at which several Burlington television executives were subpoenaed to testify. Thereafter, he introduced legislation which would have wrested from the MCAA its authority over Mt. Mansfield and abolished the Association. On the eve of its enactment into law, the MCAA negotiated a settlement agreement with CVTI to permit it to become a member of MCAA, to have input in creating the Master Plan, and to be included in the umbrella application submitted to the State Environmental Board. CVTI has yet, however, to be admitted into membership of the MCAA.

Since the agreement was reached, the MCAA has continued to gather information from its engineering consultant in order that it might finalize the Master Plan. Before it can gain approval for the Master Plan, however, the MCAA must deal with two additional issues which recently came to light---the claim that any plan will harm the habitat for a local bird, the Bicknell Thrush; and the existence of a nineteenth century deed restricting use of the land.

The Bicknell Thrush

In 1995, at the time when CVTI first approached MCAA about placing the WFFF(TV) tower on Mt. Mansfield, the MCAA told CVTI that approval would harm the habitat of the Bicknell Thrush, a small bird which nested near the crest of the mountain. To avoid disturbing the bird's nesting, CVTI was advised that it would only be able to construct its tower during a few months each year when there was no nesting. This was particularly troublesome since inclement weather already limited construction to a very short period of time each year. Subsequently, however, MCAA advised CVTI that the Thrush actually nested lower down on the Mountain than originally thought and that construction on the summit would not infringe on its nesting. Nevertheless, local environmentalists remain concerned about the effects of the construction on the bird. They note that the noise engendered by construction of new towers could disturb the thrush's nesting and that during migration the birds may fly into the guy wires or towers.

1859 Deed

Concerned about the Bicknell Thrush and other wildlife, a group of local environmental groups recently uncovered an 1859 deed which contains language they contend restricts use of the land on the summit of Mt. Mansfield to scientific purposes. They argue that the deed precludes the presence of any towers there----existing or proposed. Vermont's Attorney General is researching the deed issue and is expected to issue an opinion interpreting the effect, if any, of the restrictive language.

The Town of Stowe Planning Commission

CVTI must also obtain approval from the Town of Stowe Planning Commission under a Site Plan Review process required for all non residential developments. After

receiving a request to build on Mt. Mansfield, the Planning Commission conducts a hearing to examine the affect of the proposed development on issues including traffic, landscaping, and energy efficiencies. The review process generally takes several months.

The Town of Stowe Zoning Board

CVTI must also obtain a conditional use permit for construction on Mt. Mansfield from the Town of Stowe Zoning Board. To do so, CVTI must file an application with the Board which is then sent to all bordering towns for consideration. A public hearing is then held and, thereafter, the Board makes a determination regarding the application. This process can take four months or more, depending on the size of the Zoning Board's docket. The Zoning Board and Planning Commission proceedings can run concurrently.

The State of Vermont – Act 250 Approval

Finally, approval under Vermont's Act 250 must be obtained. To obtain approval, CVTI must submit a request to the District Environmental Commission. The Commission bases its decision on 10 criteria, including: consideration of the aesthetic impact of the construction; whether the plan conforms with town and regional plans; and the impact of the construction on the local habitat and wildlife. Any interested party may comment on the request. State agencies and municipal and regional planning commissions are automatically made parties to such proceedings. Any party to the proceeding has the right to appeal the Commission's decision. Under the circumstances most favorable to CVTI (i.e., it receives a grant and no parties appeal) the Act 250 process takes approximately three months.

Suggested Remedies

As detailed above, CVTI has expended enormous financial resources and considerable time in attempting to build a television station that will serve the maximum audience and be competitive with existing Burlington television stations. It has been frustrated at every turn by a land use approval process which is any television licensee's worst nightmare. The result is that 175,000 persons who would be served by WFFF operating from Mt. Mansfield are deprived of over-the-air Fox programming for the foreseeable future, and the public interest is disserved. And, in the long run, CVTI will be required to incur the extraordinary cost of two complete transmission facilities---its current temporary facility and a Mt. Mansfield plant. CVTI's frustration is likely to be shared by other Burlington area television licensees when they seek local approvals for the construction of their digital transmission facilities.

For these reasons, CVTI urges the Commission to adopt regulations which provide for preemption of state and local laws, as proposed by the Petitioners, and afford parties such as CVTI the means to construct new and improved broadcast facilities in a timely fashion. It also implores the Commission to expand the Unique Site Rule, 47 C.F.R. Section 73.635, so that it applies at times other than the license renewal period, and provides redress to broadcasters who may have been prevented by competitive forces from constructing their transmission facilities.

Federal Preemption

CVTI urges the Commission to afford relief to all television licensees, not just DTV permittees in the top markets. NTSC broadcasters such as WFFF(TV) have been hindered by the use of the local and state regulatory processes, often by market

competitors, to prevent them from gaining the local and state approvals necessary to build their facilities. For these broadcasters, federal preemption of local and state regulation on siting and construction of both analog and digital transmission facilities, is necessary. Such preemption would also benefit the public interest by ensuring the timely introduction of new and improved television service to an area.

Although broadcasters in the top markets have a rapid DTV build-out schedule which, on the surface, may appear to create a more compelling case for preemption, CVTI believes that preemption should not be limited to broadcasters in those markets. The facts that CVTI recites above make clear that obtaining local land use consents can easily consume a number of years. Accordingly, preemption will be necessary in such situations to enable smaller market broadcasters to meet even the more relaxed DTV timetables applicable to them.

Expansion of the Unique Site Rule

The Unique Site Rule, 47 C.F.R. Section 73.635, should also be modified to provide television licensees with a more effective remedy in those situations where an in-market competitor seeks to use its access to a transmitter site to prevent the introduction of a new or improved facility. In particular, the rule should be revised so that it provides relief at all times, not just during the license renewal period.

Under Section 73.635:

No television license or renewal of a television license will be granted to any person who owns, leases or controls a particular site which is peculiarly suitable for television broadcasting in a particular area and (a) which is not available for use by other television licensees, and (b) no other comparable site is available in the area; and (c) where the exclusive use of such site by the applicant or licensee would unduly limit the number of television stations that can be

authorized in a particular area or would unduly restrict competition among television stations.

As WFFF's history makes abundantly clear, the Mt. Mansfield site is "peculiarly suitable for television broadcasting" in the Burlington, Vermont area. Additionally, the site is not currently available for use by any broadcaster other than those with towers already located on the mountain. Further, the geography of Vermont is such that only by broadcasting from Mt. Mansfield, the tallest mountain in the state, can a television station reach both the eastern and western parts of the state. Thus, no other comparable site to Mt. Mansfield is available in the area. Finally, the exclusive use of the site by the licensees already broadcasting from the mountain substantially delayed the initiation of a first local Fox service and the fourth local television service and caused such service, when finally instituted, to originate from a distinctly inferior site. A case can be made, therefore, under the each prong of the Unique Site Rule. Unfortunately, due to the way in which the Rule is drafted, CVTI has no effective recourse until the submission of renewals for Vermont TV stations. The requested relief is all the more necessary now that television license renewals are for a period of eight years rather than three, as was the case when the rule was enacted in 1963. Only by so modifying the Rule will the Commission serve the purpose of the unique site rule to remove unnecessary impediments to competition and ensure that the public will have

access to a variety of differing broadcast sources. K-W TV, Inc., 70 RR 2d 1655, 1659 (1992).⁴

CHAMPLAIN VALLEY TELECASTING, INC.

By


John C. Nichols
President

Dated: October 29, 1997

⁴ In 1981 the Commission declined to adopt a request by a broadcaster that the Commission amend Section 73.635 to require that grants of construction permits for new or changed facilities for VHF stations which involve construction or modification of a tower, be conditioned to permit UHF television stations, upon request, to place their antenna on the tower. In its decision, the Commission noted that the current restriction "strikes the proper balance between the exercise of a licensee's business judgment and the Commission's responsibility to regulate the broadcast industry in the public interest." See Common Use of TV Towers, Report and Order, 49 RR 2d 482, 484 (1981). The Commission also noted, however, that it "would intrude in this area only in situations where the exclusive use of a unique site results in limitations of service to the public." Id. at 484. CVTI submits that exclusive use of the Mt. Mansfield site by the broadcasters already located on it has resulted in limitations of service to the public.

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February 6, 1997

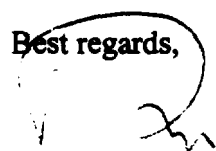
William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Request for Special Temporary Authorization
WFFF-TV, Burlington, VT

Dear Mr. Caton:

Attached is an amendment to a request for Special Temporary Authorization submitted to the Commission on February 3, 1997, on behalf of Champlain Valley Telecasting, Inc., permittee of WFFF(TV), Burlington, VT. Please associate the amendment with the February 3 letter request.

Best regards,


Richard J. Bodorff

RJB/lar
Enclosure
cc: David Bennett (By Hand)

Certificate of Amendment

The letter request of Champlain Valley Telecasting, Inc., permittee of WFFF-TV, Burlington, VT, for a Special Temporary Authorization to commence operation is hereby amended to include the attached engineering materials.

A handwritten signature in dark ink, appearing to read "John C. Nichols", written over a horizontal line.

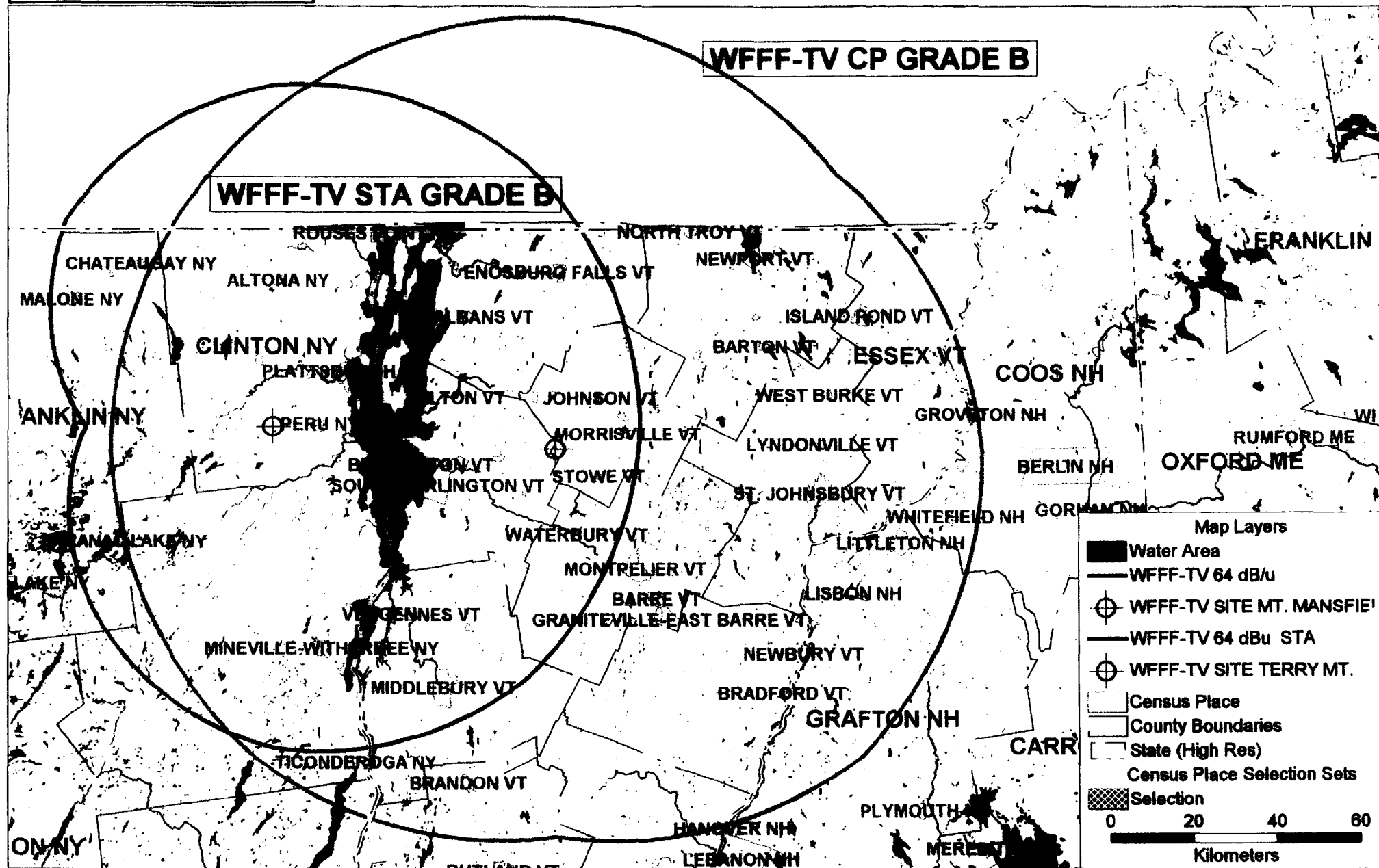
John C. Nichols, President

Dated: February 5, 1997

COHEN, DIPPELL AND EVERIST, P. C.

COMPARISON OF COVERAGES
RE PROPOSED MT. MANSFIELD GRADE B
VERSUS TERRY MT. BRADSHAW 750 KW STA
FEBRUARY 1997

<u>Contour</u> <u>Grade B</u>	<u>Population</u>	<u>Area</u> sq.km	<u>Outside</u> <u>Mt. Mansfield</u> <u>Grade B</u>	
			<u>Population</u>	<u>Area</u> sq.km
Mount Mansfield	548,157	27,524	--	--
Terry Mt. 750 kW STA	372,403	15,208	18,098	1,645
Overlap w/Mt. Mansfield	354,305	13,563		
Percent Of Grade B Outside Mt. Mansfield Grade B				
			<u>Population</u>	<u>Area</u> sq.km
Terry Mt. 750 kW STA			5.1	10.8



THE *Stowe* REPORT

JUNE 13, 1996

Serving the Greater Mt. Mansfield Area

Volume 40, Number 24(USPS614-620)

On Mt. Mansfield

Media outlets fight over antenna space

by John Zicconi

A storm of controversy has been brewing atop Mount Mansfield, and its eventual outcome may have a direct effect on local television viewers.

Champlain Valley Telecasting Inc. (CVTI) wants to bring a local FOX affiliate to the region but is having trouble gaining support for an antenna on top of the mountain. If a resolution cannot be found within the next few months, the network may be forced to locate atop Mount Terry in New York, which would prevent its signal from being picked up in many areas east of the Green Mountains.

Local cable subscribers would be able to access the station no matter where the antenna is located. But many free TV viewers, which make up about 40 percent of all homes, would be left without popular programs like *Melrose Place*, the *X Files* and about half of all Sunday afternoon NFL football games if the station cannot locate atop Vermont's highest peak.

"Stowe (and other parts of Lamoille County) would not get FOX if we have to locate on Mount Terry," said John Nichols, president of CVTI.

Northern Vermont, in particular
See 'Antennas,' page 20

ANTENNA

Continued from page 1
lar the Burlington area, is the most densely populated region of the United States without a local FOX affiliate.

Standing in the station's way of locating on Mount Mansfield are rules that govern the mountaintop's development, Act 350, and, if you listen to Mr. Nichols, his competitor WCAX TV-3.

WCAX stands to lose millions of dollars in advertising as well as NFL football if FOX comes to town, so its top brass is doing everything it can to make sure Channel 44, the new FOX station, does not locate on Mount Mansfield, Mr. Nichols said.

"The people of Vermont are being denied free, over the air FOX programming...because our competitors are trying to keep us off that mountain," Mr. Nichols said.

At issue are rules that govern the mountaintop's collocation area, a 28-acre tract of land near the "Noes" that contains the transmitting equipment of more than 35 separate telecommunication companies.

The University of Vermont and the Shrew Mountain Raft control that section of mountain, which contains four broadcast towers and four buildings. Four other groups - Vermont ETV, the Vermont State Police, WVMY TV-23 and WCAX - rent space there.

Together, these six organizations form the Mount Mansfield Collocation Association, which

insure compatibility of all mountaintop users prior to allowing the installation of any new equipment.

"Typically what we try to do is push people off the mountain," said Peter Martin, President of WCAX and chair of the collocation association. "We want to know if there are other ways you can do what you want to do without being on Mount Mansfield. We do not want a forest of antennas up there."

During a recent ACT 350 hearing regarding the placement of cellular phone equipment in the collocation area, the District 5 Environmental Commission, at the encouragement of Mr. Martin, indicated that it did not want to see any more development in the collocation area until a master plan of the region was developed.

That decision, which prevented Channel 44 from either constructing a new tower or expanding an existing tower atop the mountain, was immediately called into question by CVT1 officials.

Because Mr. Martin was leading the charge for the development of this master plan, CVT1 accused WCAX of advocating a moratorium on development as nothing more than a vehicle to deny a potential competitor from entering the market.

Mr. Martin denied these allegations, and has consistently stated that development of a master plan is the only way to

ensure environmental protection of the collocation area.

And, because all TV stations will likely alter their signals within the next decade to accommodate new high-definition technology, master planning is essential to ensure that everyone can broadcast simultaneously from the mountaintop without interfering with each other, Mr. Martin said.

The District 5 Commission has softened its stance upon appeal and decided CVT1 could submit an ACT 350 application for a new or revived tower, but Mr. Martin has not backed down from his insistence that all now development take place in accordance with a master plan.

Currently, there are three TV towers on Mount Mansfield that broadcast the signals of three different stations - WVMY, WCAX and ETV. If planning is done correctly, in the future only two TV towers will be needed to carry the signals of five stations - the existing three, FOX, and WPTZ TV-5, which now transmits from Mount Terry, Mr. Martin said.

However, if Channel 44 were allowed to build a new tower before the master plan is complete, it could throw a monkey wrench into the process and require far more towers than are really necessary, he said.

"People are going to be living with the decisions that get made for a very long time," Mr. Martin said. "The issue is how carefully

do you make those decisions? My answer is very carefully. Even if you have to spend a little time and a little money."

Bids to design a master plan are due in next month, and a draft could be ready as early as January, Mr. Martin said.

That timeline, however, could prevent Channel 44 from coming on line during the summer of 1997, and force it to locate on Mount Terry. Because the construction season atop Mount Mansfield is short, all permits must be in hand by spring or the station's debut could be delayed until 1998, which is unacceptable to FOX.

Mr. Nichols gives Mr. Martin credit for devising a "brilliant" cover to what he considers nothing more than an underhanded attempt to use the environment as a stalling tactic for monetary gain.

Nothing in Channel 44's plans is harmful to the future of the collocation area, nor is there a threat to the future broadcasting capabilities of any other stations, Mr. Nichols claimed.

Officials at Vermont ETV, who have invited FOX to be a tenant on their tower, agree.

"I don't think planning should preclude business from going on," said Hope Green, president of the public television station.

Vermont ETV, which is an equal partner with WCAX in the Collocation Association, does not believe CVT1's plan will harm either the future look of the col-

location area or interfere with the installation of new technology by other stations.

"The planning issue is very real, I just don't want it to be a restraint of trade issue," Mr. Green said. "We want to put Channel 44 up there and have them as a tenant, and we want to do it without a whole lot of flack... We think we can get Channel 44 on without derailing the planning process."

Since first proposing to replace the existing 65-foot Vermont ETV tower and antenna with a new one about 145-foot high, Channel 44 has pulled that request from the table. It now plans, within the next few weeks, to present a new proposal that only calls for the modification of the existing ETV tower.

Just how well this new proposal will fly is anybody's guess. Members of the Collocation Association, who have tried to stand clear of the dispute between Channel 3 and Channel 44, said they will review the new application with an open mind.

But if the consideration of a yet-to-be completed master plan prohibits the acceptance of the proposal in time for Channel 44 to meet its 1997 broadcast deadline, lawsuits are liable to fly.

"We are going to go forward with or without a (master) plan," Mr. Nichols said. "And we have the lawyers chomping at the bit and ready to go if our competitors try to stop us."

Perspective

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WEDNESDAY TIMES ARGUS APRIL 7, 1996

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Apr 8 '96

Stations Jockey For Use Of Mt. Mansfield

By NICK MARRO
Vermont Press Bureau

MONTPELIER — Paul Poirier said it best. Poirier, a member of the District 5 Environmental Commission, looked at a room full of lawyers and television executives during a hearing late one evening last week and said, "Everybody here seems friendly, but there are a lot of hidden agendas flying by." As a former state legislator and House majority leader, Poirier has years of experience spotting hidden agendas. The issue before Poirier and the District Commission was a proposal by a new television station to locate a tower and transmitting equipment on top of Mt. Mansfield, the state's highest mountain.

Champlain Valley Telecasting, Inc. (CVTI) wants to locate on Mt. Mansfield because the mountain



Tarrant

"We have nothing against planning, but we do have a problem with our competitors drafting the plan and proposing it to the commission."

— Gerald Tarrant, lawyer,
Champlain Valley Telecasting, Inc.

provides the station with the best location for transmitting its signal to the greatest number of Vermonters.

Standing in the company's way is a recent decision by the District 5 Commission involving the Atlantic Cellular Co. CVTI officials say the decision amounts to a moratorium on any new construction on Mt. Mansfield until the completion of a master plan detailing future uses for the mountain top.

The company has filed a motion to intervene in the Atlantic Cellular case and to alter the findings so that CVTI can proceed with its plans to build on Mt. Mansfield before the master plan is completed.

On the surface the issue seems simple, but it is complicated by the fact the master plan study is being conducted by the Mt. Mansfield Colocation Association, whose members include two potential competitors of CVTI — WCAX-TV and WVNY-TV.

At a recent District 5 hearing, CVTI's lawyers questioned the fairness of having the company's competitors conduct a master plan study that may well affect CVTI's ability to compete.

"We have nothing against planning," said attorney Gerald Tarrant, "but we do have a problem with our competitors drafting the plan and proposing it to the commission."

Tarrant suggested the idea for the master plan study may have come from Peter Martin, the executive vice president of WCAX, during discussions with the District 5 Commission on June 7, 1995 about the Atlantic Cellular case.

"After reading the filings we arrived at the conclusion that WCAX planted the seed for the master plan study," Tarrant said. "WCAX indicated CVTI was a possible tenant on the mountain during those discussions."

See Page 4: Towers

(Continued from Page One)
sions with the commission last June."

Tarrant suggested those discussions paved the way for the commission's creation of the moratorium. He made it clear that future competition between CVTI and WCAX could not be avoided.

"We are in direct competition with WCAX," Tarrant said. "We can't get around that. Burlington is the largest area in the United States without a Fox Network affiliate and we proposed to bring Fox to Vermont."

Tarrant argued that the master plan process should not hold up his client's application to locate on Mt. Mansfield, and questioned the process developed by the Colocation Association in developing the proposed master plan.

The new tower would be capable of transmitting a high-definition, digital signal called "advanced television."

"You cannot plan based on speculative technology," Tarrant told the commission. "We all know Advanced Television will come, but we don't know when it will come. Those discussions will be subjected to political debates."

"Allow us to intervene and argue our case," Tarrant continued. "If they have a plan three or four months from now, let them bring it forward. But don't let them tell us we can't compete."

Lawyers for both WCAX and WVNY have filed motions asking to intervene in the Atlantic Cellular case, but only if the commission allows CVTI permission to intervene.

Attorney Donald Randall, who represents WCAX, argued there was no need for the commission to grant CVTI party status in the Atlantic Cellular case. And WVNY's

attorney, Philip Linton, said his client strongly disagreed with CVTI's case.

Martin took issue with several of Tarrant's statements, and said Tarrant "misrepresented (WCAX's) role in this."

Martin said he attended the June 7, 1995 meeting as a representative not for WCAX, but for the Colocation Association, of which WCAX is a member. He also said the telecommunications issues facing the Colocation Association were complex.

Martin said that CVTI's request to locate on the mountain "raises a number of issues that require trade-offs."

"One decision leads to another," said Martin, who walked the commission through a variety of possible scenarios involving future telecommunications equipment on the mountain.

"That's why we need a master plan with teeth. Otherwise we will have piecemeal development," he argued.

Martin downplayed Tarrant's arguments about competition and lengthy delays designed to keep CVTI off the mountain, saying the Colocation Association has followed "a pretty aggressive schedule given the complexities of what it is we are dealing with."

He said CVTI's engineer has been appointed to the Association's technical committee as an observer to monitor the process.

"They are at the table," he said. "And at this point they are not a land owner or a lessee. They are only a potential applicant."

Although the District Commission will focus on the environmental concerns associated with CVTI's request, the competition created by a new commercial television station in Vermont is clearly

also an issue.

CVTI would be the first new commercial television station to locate in the Burlington area since 1968 when WVNY went on the air.

The company is seeking to affiliate with the Fox Network. Fox has local broadcast rights to the National Football League's National Conference games, which are aired over WCAX because the region doesn't have a Fox affiliate.

That would change if CVTI's station goes on the air as a Fox affiliate.

CVTI's proposal calls for replacing the existing Vermont ETV tower with a state-of-the-art tower capable of handling signals for CVTI's station, Vermont ETV, and WPTZ, which is based in Plattsburgh, N.Y., and now has its transmitting facilities on a mountain top in upstate New York.

WPTZ competes with WCAX and WVNY in the Burlington region, but its signal doesn't reach most of Vermont east of Mt. Mansfield. That would also change if it were allowed on CVTI's proposed tower.

Support for CVTI's proposal has come from Vermont ETV and Vermont Public Radio. Both stand to benefit from CVTI's location on the mountain.

Vermont ETV would get a new tower and transmitting equipment that would make the station ready for Advanced Television in exchange for allowing CVTI to transmit from ETV's building on the mountain.

Vermont Public Radio would benefit because its antenna would be higher, thus providing the station with a stronger signal.

The District Commission has taken the requests for intervention under advisement and is expected to make a decision later this month.